

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 22, 2003

STATE OF TENNESSEE v. JACKIE LEE McGHEE

Appeal from the Criminal Court for Anderson County
No. AOCR116B James B. Scott, Jr., Judge

No. E2002-02318-CCA-R3-CD
November 3, 2003

The defendant, Jackie Lee McGhee, was convicted of aggravated robbery. See Tenn. Code Ann. § 39-13-402(a)(1). The trial court imposed a Range I sentence of eight years. In this appeal of right, the defendant asserts that the evidence was insufficient to support his conviction. The judgment is affirmed.

Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed

GARY R. WADE, P.J., delivered the opinion of the court, in which JOSEPH M. TIPTON and NORMA MCGEE OGLE, JJ., joined.

Roger A. Miller, Clinton, Tennessee (on appeal); Kevin Angel, Oak Ridge, Tennessee (at trial); and Randall Crossing, Jefferson City, Tennessee (at trial), for the appellant, Jackie Lee McGhee.

Paul G. Summers, Attorney General & Reporter; David H. Findley, Assistant Attorney General; and Jan Hicks, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

At approximately 10:00 P.M. on March 12, 2000, two men wearing ski masks entered the Marlowe community residence of the victim, James Taylor, through an unlocked back door. The larger of the two men held a shotgun and ordered the victim to the floor. The victim's hands and feet were bound with electrical wire and thirteen hundred eighty dollars, mostly in hundred dollar bills, was taken from his wallet. The shorter of the two men then removed sixty dollars in rolled quarters from a cabinet drawer in the victim's living room.

At trial, the sixty-seven-year-old victim, who typically cashed his retirement and social security benefit checks rather than using a bank account, testified that two men entered the back door of his residence. He estimated that the defendant was "about the same size" as the shorter individual who had "used some electrical wire" and "tied me up." The victim, who lived alone, recalled that

the car the robbers drove had loud mufflers. Before leaving, the shorter of the two men offered to telephone someone to untie the victim. When the robbers left, the victim freed himself, "[g]rabbed a pistol and ran out the door," hoping to stop the two men. He asked a neighbor to contact the police, drove after the vehicle used in the robbery, and apprehended its driver, Jarrod Copeland. He pointed out that Jimmy Buck, who was also convicted of the same offense, was the same height as the taller of the two robbers. Officer Jeff Gilliam, who was dispatched to the scene of the robbery, arrested Copeland. Detective Penny Baker, Chief of the Detective Division with the Anderson County Sheriff's Department, testified that some two weeks after the robbery the victim had discovered "near the road" a sawed-off shotgun similar to the one used in the robbery. The barrel to the gun had been previously found at the Copeland residence.

Jarrod Copeland made a statement to the police. He claimed that on March 12, 2000, the defendant and Buck were at his residence planning to rob the victim. Copeland stated that the defendant had entered his bedroom and taken a shotgun that had been "shortened" the night before. Copeland recalled that he drove his wife's Isuzu to the victim's residence after being promised by the others that the proceeds of the robbery would be divided three ways. Copeland stated that because he was unfamiliar with the location of the victim's residence, it was necessary for the defendant to provide directions from the back seat. According to Copeland, the defendant and Buck had "dark . . . ski masks on" when they left the vehicle. Copeland told police he "drove around for about 15 minutes" then "I went back down there and I didn't see them so I left." By the time of trial, Copeland had pled guilty to robbery.

At trial, Nicole Copeland, the wife of Jarrod Copeland, testified that just before the robbery, she overheard a conversation at her residence between the defendant, Buck, and her husband. According to Ms. Copeland, the three men discussed whether "they was gonna do this or what" involving "Taterbug," the nickname of the victim. She was able to identify a photograph taken by police of the car the three men occupied when they left the residence. She also identified her husband's shotgun, which had a shortened barrel. Timothy Jenkins, Buck's cousin, testified that he had seen Buck and the defendant at the Copeland residence on the day of the robbery.

The defendant claimed that he did not participate in the robbery. He testified that Copeland was motivated to lie because of a dispute about marijuana plants. The defendant contended that at the time of the offense, he was at the residence of William Cash Pate and Linda Jean Pate, his girlfriend's aunt and uncle, picking "a few flowers" for his girlfriend. Ms. Pate recalled that the defendant was at her residence overnight on a weekend in mid-March of 2000. She believed the day was a Sunday. William Pate testified that he was "pretty sure" the defendant had stayed at his residence on a Sunday night in March.

In this appeal, the defendant asserts that the evidence is insufficient to support his conviction. Specifically, he complains that the state relied on the uncorroborated testimony of his accomplice, Jarrod Copeland, as evidence that he participated in the robbery.

On appeal, of course, the state is entitled to the strongest legitimate view of the evidence and all reasonable inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 853

(Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the proof are matters entrusted to the jury as the trier of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). When the sufficiency of the evidence is challenged, the relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. Liakas v. State, 199 Tenn. 298, 286 S.W.2d 856, 859 (1956). Because a verdict of guilt removes the presumption of innocence and raises a presumption of guilt, the convicted criminal defendant bears the burden of showing that the evidence was legally insufficient to sustain a guilty verdict. State v. Evans, 838 S.W.2d 185, 191 (Tenn. 1992).

It is well settled that a defendant cannot be convicted solely upon the uncorroborated testimony of an accomplice. An accomplice has traditionally been defined as one who knowingly, voluntarily, and with common intent with the principal offender, joins in the commission of a crime. Clapp v. State, 94 Tenn. 186, 30 S.W. 214, 216 (1895). Only slight circumstances are required to furnish sufficient corroboration. Those circumstances must, however, be entirely independent of the accomplice's testimony and lead to an inference that not only has a crime been committed but also that the defendant is implicated in that crime. Garton v. State, 206 Tenn. 79, 332 S.W.2d 169, 175 (1959). Whether a witness's testimony has been sufficiently corroborated is a function entrusted to the jury as the trier of fact. Sherrill v. State, 204 Tenn. 427, 434, 321 S.W.2d 811 (1959); Stanley v. State, 189 Tenn. 110, 222 S.W.2d 384, 386 (1949).

Further, a criminal offense may be established exclusively by circumstantial evidence. Duchac v. State, 505 S.W.2d 237, 241 (Tenn. 1973); Marable v. State, 203 Tenn. 440, 313 S.W.2d 451, 456-58 (1958); State v. Hailey, 658 S.W.2d 547, 552 (Tenn. Crim. App. 1983). The facts and circumstances must "be so strong and cogent as to exclude every other reasonable hypothesis save the guilt of the defendant." State v. Crawford, 225 Tenn. 478, 470 S.W.2d 610, 612 (1971). The weight of the circumstantial evidence is for the jury to determine. Williams v. State, 520 S.W.2d 371, 374 (Tenn. Crim. App. 1974) (citing Patterson v. State, 4 Tenn. Crim. App. 657, 475 S.W.2d 201 (1971)). The same standard of review for sufficiency claims is applicable to guilt based upon direct as well as circumstantial evidence. State v. Brown, 551 S.W.2d 329, 331 (Tenn. 1977); Farmer v. State, 208 Tenn. 75, 343 S.W.2d 895, 897 (1971). The court may not substitute its inferences for those drawn by the trier of fact in circumstantial evidence cases. Liakas, 286 S.W.2d at 859; Farmer v. State, 574 S.W.2d 49, 51 (Tenn. Crim. App. 1978).

In order to support a conviction for aggravated robbery, the state must prove that the defendant committed a robbery "with a deadly weapon or by display of any article used or fashioned to lead the victim to reasonably believe it to be a deadly weapon." Tenn. Code Ann. § 39-13-402(a)(1). Robbery is defined as "the intentional or knowing theft of property from the person of another by violence or by putting the person in fear." Tenn. Code Ann. § 39-13-401(a).

Here, Copeland, an accomplice, testified that the defendant planned for and participated in

the robbery. According to Copeland, Buck and the defendant decided "that one of them was going to have the gun and the other was going to tie him up." Nicole Copeland overheard some of the discussions among the three men and knew they left together in her vehicle. Timothy Jenkins had also seen Buck and the defendant at the Copeland residence that day. Further, the victim testified that "the smaller man . . . came in" through an unlocked back door and, at trial, was able to point out that the defendant was "the same size" as the individual who had bound his hands and feet, had removed his wallet from his jeans, and had taken the sixty dollars in rolled quarters from the victim's living room. He recognized the car Copeland drove because of the loud mufflers he had heard before the two robbers entered a back door of his residence.

Corroboration of an accomplice's testimony need only be slight. Here, the corroborative testimony of Ms. Copeland, the victim, and others met that standard. Additionally, the jury accredited the testimony of the state's witnesses and resolved inconsistencies in the proof in favor of the state, as was its prerogative. See State v. Summerall, 926 S.W.2d 272, 275 (Tenn. Crim. App. 1995). In our view, the evidence, direct and circumstantial, was sufficient for a rational trier of fact to have found beyond a reasonable doubt that the defendant committed the crime.

Accordingly, the judgment of the trial court is affirmed.

GARY R. WADE, PRESIDING JUDGE